

REMARKS

Claims 1 to 21 are now pending in the application.

Claims 1, 18, 19 and 20 are currently amended. Claim 21 is added. The Applicant submits that no new matter is introduced by the addition of claim 21.

Substance of Interview

A phone interview took place on April 25, 2007. The parties present were Benjamin W. Lee and Kim Nguyen from the USPTO, C. Marc Benoit (Agent of Record), Martin Roy and Marie-Claude Gagnon for the Applicant.

The Examiner explained his position regarding the rejection of claims 1, 19 and 20. The Examiner stated that claims 1, 19 and 20 are non-statutory since they do not produce useful, concrete, and tangible results. The Applicant disagrees. The Examiner stated that claim 20 is directed toward a computer program embodied on an electrical or electromagnetic signal and the claim is thus non-statutory. The Applicant disagrees for reasons stated below. The Applicant proposed adding the limitation "at least three statuses of an evolving symbol" to claims 1, 18, 19 and 20 to overcome the Englman reference. The Examiner indicated that further consideration and search would be necessary to determine patentability, but that the addition of the limitation would likely overcome the Englman reference. The definition of the limitations "evolving symbol" and "evolving symbol unit" as used in claims 1 and 5 was also discussed. However, the claims presently do not contain the further limitations explained by the Applicant.

Response to claim rejections

Concerning the rejection of claim 1 based on 35 U.S.C. §101, the Applicant would like to point out that by amending claim 1 to add the step of "triggering a feature", which was already present but not explicitly described as a step, the method has a concrete and tangible effect on the game. Effectively, the trigger of a feature, which may be, to list just a few examples disclosed in the specification and claim 15, a "change in the symbol prize value", a "new pay table", a "second-screen bonus" or a "wild feature", affects the game at different levels. Accordingly, a feature may modify the pay schedule (by applying multiplier or a different pay schedule altogether for at least one winning combination, for example), the game process (for example, ending a primary game and entering a bonus game or a free game session), the probabilities of forming certain or all winning combinations (or by adding new winning combinations), etc. Also, since claim 1 comprises "operating a meter displayed as at least three different statuses of an evolving symbol", it is clear that the display of the game is affected by the evolution, from a status to another, of the evolving symbol. It is the Applicant's opinion that even though "operating a meter" may seem intangible, since this meter is "displayed as at least three different statuses of an evolving symbol", this operation becomes tangible. Moreover, the trigger of a feature is usually visibly displayed to the player, to inform him/her of this fact, which results in modifying the display of the game, which is also tangible. For all those reasons, it is the Applicant's opinion that "operating a meter displayed as at least three statuses of an evolving

symbol" and "triggering a feature based on at least one of said statuses", are not only useful and concrete but also tangible.

With respect to the rejection of claim 19 under 35 U.S.C. §101, the Applicant would like to point out that the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" allows claims for a computer program embodied on a computer readable medium. Thus it is the Applicant's opinion that claim 19 meets the requirements of 35 U.S.C. §101.

With respect to the rejection of claim 20 under 35 U.S.C. §101, the Applicant would like to point out that a computer program and not a signal is the claimed subject matter. It is the Applicant's opinion that a computer would be able to execute the functions encoded in the computer program regardless on whether the codes of the computer program are embodied on a computer readable medium or carried by a signal. It is the Applicant's opinion that the last paragraph of page 57 of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" which proposes that signal claims are not eligible for patent protection does not apply to claim 20 since this claim does not cover a signal but rather a computer program carried in a manner usable by a computer to modify its functions, as is, without any modifications or need for any further embodiment.

Regarding the claim rejections based on 35 U.S.C. §102(e), the Applicant respectfully requests the allowance of the discussed claims based on the following arguments:

It is the Applicant's belief that Englman simply describes a game wherein the occurrence of a predetermined winning outcome (here a line of three Watering Can symbols) triggers a multiplier feature, illustrated by modifying the appearance of a predetermined symbol (such as "growing" the Plant symbol), so that, after the multiplier feature has been triggered, obtaining a "grown" Plant symbol on the same pay line as a winning combination, doubles the prize associated with this winning combination. The feature remains triggered until the end of a purchased series of play. Obtaining a second or any subsequent combination of three Water Can symbols during the current purchased series of play has no effect on the multiplier feature or on the predetermined symbol.

It is the Applicant's opinion that the enhancement of the Plant symbol is used as a visual signal to the player that the multiplier feature has been triggered, and thus is merely an on/off signal to inform the player on whether the multiplier feature is triggered or not. Accordingly, all occurrences of the Plant symbol are enhanced when the feature is triggered. This opinion is confirmed in the following sentence copied from Englman's patent application: "To convey to the player that the credit amounts for any future winning combination along the same pay line as the evolving symbol will be enhanced, the machine may also change (e.g., enlarge) the appearance of the evolving symbol on the reels" [Paragraph 40].

According to *KSR Int'l. Co., v. Teleflex, Inc.*, it is, at this moment useful to resolve the level of a person having ordinary skill in the art (PHOSITA). Since both the invention and the cited prior art are about line games comprising triggers and features, it

is the Applicant's opinion that the PHOSITA would understand how an outcome is randomly determined in a line game, i.e. by randomly spinning and stopping virtual or mechanical reels, and how the outcome accordingly generated would be evaluated according to a pay schedule. This person would also know the different triggers known in the art at the time of the invention, would know what is a counter or meter in a line game, would know what is a game feature and what types of game features are known in the art at the moment of the invention.

The invention differs from Englman in many of its aspects. According to amended claim 1, the evolving symbol has "at least three different statuses" which are used to display a meter. This is different from the two statuses described in Englman, these statuses corresponding to the visual displays associated with the "on" and "off" statuses of the multiplier feature. Since there cannot be any other status for a feature as described in Englman than "on" and "off" (triggered or not), a third statuses for the evolving symbol would be a non-sense. It is thus the Applicant's opinion that Englman teaches away from offering an evolving symbol having more than two statuses.

The invention also differs from Englman in the fact that further occurrences of the trigger causing the evolution of the evolving symbol (evolution trigger) have an effect in the invention while it is not the case in Englman. According to Englman's teaching, once the trigger (three Watering Can symbols) appears on the screen, the multiplier feature is triggered, the evolving symbol (the Plant symbol) is visually modified (it grows) and the multiplier feature remains triggered until the end of the game session (until the player has played all purchased plays). In the invention, since the evolving

symbol has at least three statuses, a first occurrence of the evolution trigger brings the evolving symbol from its first status to a second and a further occurrence of the evolution trigger brings it to a further status. Accordingly, a further occurrence of the evolution trigger has an effect on the game in the invention while it does not in Englman. It is the Applicant's opinion that it is a substantial difference between Englman and the invention and that this inventive step would not have been obvious for a person of ordinary skill in the art at the moment of the invention.

Concerning rejection of claim 5, describing that "each occurrence of said evolving symbol compris[es] an Evolving Symbol Unit (ESU)". The Applicant would like to remind the Examiner that a symbol may appear more than once on a reel, each of said appearances or occurrences being, according to claim 5 an ESU. Accordingly, each ESU, in the invention may evolve independently (claims 8 and 14), while nowhere in Englman is it taught that each occurrence of the evolving symbol (the Plant symbol) is treated individually from the others. In fact, it is quite the contrary. Englman itself admits that the evolving symbol is used as a flag informing the player that the multiplier feature has been triggered and may now be applied to winning outcomes: "To convey to the player that the credit amounts for any future winning combination along the same pay line as the evolving symbol will be enhanced, the machine may also change (e.g., enlarge) the appearance of the evolving symbol on the reels" (par. 40, lines 1 to 5). Logically, if the evolving symbol is used as a flag to inform the player, each and every occurrences of the evolving symbol on the reels should be modified so the player is informed, each time the symbol appears on the screen, of the status of the feature. It is

thus the Applicant's opinion that Englman teaches away from claim 5 and thus this claim is not anticipated by the teaching of Englman nor rendered obvious.

Concerning rejections of claim 18, the Applicant submits that Englman does not teach a meter anywhere in its description. What is taught is that a trigger event (three Water Can symbols) triggers the evolution of an evolving symbol. Nowhere is it taught that occurrences of this trigger or that of any other event or outcome (including occurrences of the evolving symbol itself) are gathered to influence or trigger the evolution of the evolving symbol. Finally, nowhere is it taught that a meter value may be used to trigger the evolution of the evolving symbol. It is the Applicant's opinion that a person of ordinary skill in the art would not think that a simple trigger such as forming a line of three Water Can symbols is or depends on a meter. It is even more so when only one occurrence of the trigger is gathered and further occurrences are ignored.

Regarding claim rejections based on 35 U.S.C. §103, the Applicant's submits the following arguments:

Regarding rejection of claims 4 and 16, the Applicant's respectfully submit that the evolving symbol is not used to inform the player of his/her bet, but rather that the bet value may influence the evolution of all or a portion of the Evolving Symbol Units (ESU) of the evolving symbol. Even though it is well known in the art that a higher bet results in higher prize values, the Applicant submits that modifying the status of certain symbols according to the bet value was new and non-obvious at the moment of the invention.

Regarding the combination of Englman with Kaminkow, the Applicant submits that Englman does teach an evolving symbol wherein all occurrences evolve at the

same time and the same rate. The combination is thus not useful in the Applicant's opinion. But as discussed earlier, Englman fails to teach an evolving symbol having more than two statuses and other aspects of the invention. These aspects are not taught by Kaminkow either. The Applicant respectfully request that the rejections based on the combination would be withdrawn and the claims rejected based on that combination allowed.

The Applicant submits that all other rejected claims are dependent upon claims which are otherwise allowable and thus their rejections are also overcome.

It is submitted, therefore, that claims 1 to 21 are in condition for allowance.

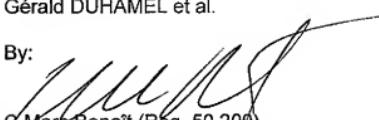
Reconsideration of the Examiner's rejections is respectfully requested. Allowance of claims 1 to 21 at an early date is solicited.

In the event that there are any questions concerning these remarks or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

Respectfully submitted,

Gérald DUHAMEL et al.

By:



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